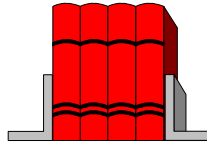


DEFINITIONS



Adverse Impact: Occurs when a decision, practice, or policy has a disproportionately negative effect on a protected group. Adverse Impact may be unintentional. (A policy that requires all applicants to have a high school diploma may have an adverse (or negative) impact on a particular group's ability to secure employment. If the high school diploma is not a necessary thing to have in order to successfully perform the job then the policy must be revisited.) Griggs v. Duke Power, 1971 Requirement failed to show relationship between the successful performance (subjective & objective) and the requirement being imposed.

Affirmative Defense: A two-part defense used by employers defending themselves against harassment charges. The first part of the defense requires that the employer show it "exercised reasonable care" to prevent harassment and took prompt action to correct the results of any harassment brought to its attention. The second part requires that the employer prove the employee "unreasonably failed" to take advantage of "preventive or corrective" opportunities provided by the employer.

Disparate Treatment: Occurs when a person is treated differently from others. The different treatment is based on one or more of the protected factors and the different treatment is intentional. (If a supervisor allows the majority of his/her employees to enjoy a particular job benefit but denies a single employee that same benefit this would be considered disparate treatment). McDonnell Douglas v. Green, Green applied for position, qualified, not hired, continued to search for applicants.

Hostile Work Environment - One that both a reasonable person would find hostile or abusive and one that a particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance.

(Examples of hostile work environment include but are not limited to: displays of graffiti, sexual, racial or religious insults or jokes; abusive treatment of an employee; and/or displays of pornographic or other offensive materials) Harris v. Forklift Systems, plaintiff does not necessarily have to show psychological harm to prove hostile environment.

Quid Pro Quo: Harassment consisting of unwelcome advances, requests for favors, other verbal or physical conduct when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual. (*Quid Pro Quo usually flows from supervisor to subordinate - the supervisor states: "if you do ____ for me I will do ____ for you."* It is often under duress that the employee makes the decision to comply with the request.)

Reasonable Person Standard: A standard used by some courts to help determine if a harassment case at issue was an illegal action. A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under

similar circumstances. The hypothetical reasonable person provides an objective by which the conduct of others is judged. In law, the reasonable person is not an average person or a typical person but a composite of the community's judgement as to how the typical community member should behave in situations that might pose a threat of harm to the public. The law considers a variety of factors in determining whether a person has acted as the hypothetical reasonable person would have acted in a similar situation. These factors include knowledge, experience, and perception of the person, the activity the person is engaging in, the physical characteristics of the person, and the circumstances surrounding the person's activities. (Courts use this standard to determine if a "reasonable person" would find the same act as offensive as the person complaining.)

Reasonable Woman Standard: A standard used by some courts to help determine if a sexual harassment case (where a woman is the plaintiff) was illegal action. It was established because women are disproportionately victims of rape and sexual assault, women have stronger incentive to be concerned with sexual behavior. Women who are victims of mild forms of sexual harassment may understandably worry whether a harasser's conduct is merely a prelude to violent sexual assault. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence a woman may perceive. (Courts use this standard in cases of sexual harassment involving women to determine if a "reasonable woman" would find the act offensive as the woman bringing a charge of sexual harassment.) Ellison v. Brady

Retaliation/Reprisal: Adverse action(s) taken because of opposition to unlawful employment practice; or employee has made a charge, testified, assisted or participated in an investigation, proceeding under the statute. This includes claims made under the EPA, ADA or ADEA. An employee is protected against retaliation for his opposition to discrimination as long as the employee has a reasonable and "good faith" belief that the employer's conduct is illegal, even if it turns out that the employee was mistaken as to the legality of the employer's conduct. If, however, the manner in which an individual protests perceived discrimination is unreasonable or if opposition is false and malicious, then the anti-retaliation provisions will not apply. In contrast, participation in the EEO process, such as filing charges, receives absolute protection. In most cases individuals begin to experience adverse actions (see definition) after filing a complaint, being a witness to in a case, or associating with the complainant.

Sexual Harassment - Sexual harassment is any unwelcome sexual advances; requests for sexual favors; or any other physical or verbal conduct of a sexual nature when:

- submission to the conduct is made either a term or condition of employment or submission or rejection of such conduct is used as a basis for employment decision(s);
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Sexual Harassment is Unlawful Workplace Harassment

(Examples of behavior that may constitute sexual harassment include, but are not limited to: unwanted touching, patting or leering; sexual assault; inquiries or comments about a person's sex life; telephone calls with sexual overtones; gender based insults or jokes causing embarrassment or humiliation; repeated, unwanted social or sexual invitations; inappropriate or unwelcome focus/comments on a person's physical attributes or appearance)

Tangible Employment Action: A decision such as a dismissal, removal, demotion, non-selection, suspension, furlough, denial of training or promotion, oral or written admonishments, etc. that significantly change another employee's employment status. Tangible job benefits when granted or denied based on submission to or rejection of unwelcome harassing conduct constitutes and illegal action.

Term, Condition, or Privilege of Employment: The circumstances (implicit or explicit) under which an employment relationship is established and carried out. It encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan. It encompasses a broad range of work-related activities and practices, including but not limited to: compensation, benefits, assignments, promotions, demotion and discipline.

Unlawful Workplace Harassment - Unwelcome or unsolicited speech or conduct based upon race, sex, creed, religion, national origin, age, color, or handicapping condition as defined by G.S. 168-A-3 that creates a hostile work environment or circumstances involving quid pro quo.

Unlawful Workplace Harassment is a form of discrimination

(Examples of behavior that can constitute unlawful workplace harassment include, but are not limited to: making jokes about individuals based on one of the protected factors; making racial or ethnic slurs; forcing employees to segregate based on one or more of the protected factors; giving a subordinate a degrading or humiliating assignment on the bases of the protected factors; displaying offensive literature/posters; and repeatedly proselytizing fellow employees on the correctness of a particular religion.)

Workplace: The workplace includes but is not limited to the physical work site, restrooms, cafeterias, training sessions, business travel, conferences, work related social gatherings, etc. (Employers are potentially liable for negative incidents occurring in the workplace.)

PROTECTED CLASSES/FACTORS: A group of people who share common characteristics and are protected from employment harassment/discrimination by Equal Employment Opportunity laws. These categories may not be used to make employment decisions unless a bona fide occupational qualification exist. Protected classes identified by state and/or federal law include:

Age - A person 40 years of age or older.

Color - Regarding the complexion or varying shades of a person's skin.

Creed - Any statement or system of belief, principles or opinions.

Disability - Any person who has a physical or mental impairment which substantially limits one or more major life activities; one who has a record of such impairment; or one who is regarded as having such an impairment.

National Origin - Characteristic of or peculiar to the people of a nation; of or relating to ancestral beginnings, physical, cultural, or linguistic characteristics of a particular national group.

Race - A local geographic or global human population distinguished as more or less distinct group by genetically transmitted immutable characteristics (such as skin color, hair texture and certain facial features); any group of people united or classified together on the basis of common history, nationality, or geographical

distribution; mankind as a whole. **All people are allowed for the purposes of Title VII of 1964 Civil Rights Act to claim genealogy to one or more race and are, therefore, readily covered under this category.**

Religion – All aspects of religious observance, practice and belief which include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.

Sex/Gender - The condition or character of being male or female. Sexual orientation or preference is not protected under this or any other protected class identified by Title VII of the 1964 Civil Rights Act. **All people possess this attribute and are, therefore, readily covered under this category.**

ALL PEOPLE BELONG TO AT LEAST ONE PROTECTED CLASS.

Examples of Protected classes under each category are as follows:

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|-------------------------|--|
| Race: | Mongoloid, Negroid & Caucasoid: Blacks/Africans, Whites/Europeans, Asians/Pacific Islanders. The EEOC counts people as White, Black, Asian/Pacific Islander, Other & Hispanic. However, Hispanic is not a race but is an ethnic designation. You can find Hispanic people of African, European, Indian & Mixed heritage. |
| Color: | People of varying complexions & shades of skin. |
| Creed: | Humanists, Scientologists (very similar with religion, contains a statement of beliefs or a declaration of principles) |
| Religion: | Buddhists, Catholics, Jews, Protestants, Muslims, Taoist, Atheist, etc. |
| Gender: | Women & Men |
| National Origin: | Guamanians, Italian-Americans, Irish Americans, Hawaiians, etc. |
| Age: | People Aged 40 and over |
| Disabled: | Hearing Impaired, Vision Impaired, Epileptics, Paraplegics, Mentally Impaired |